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IN THE
Supreme Court of the United States
OCTOBER TERM, 1941.

No. 1127

MANILA GAS CORPORATION and THE ISLANDS
GAS AND ELECTRIC COMPANY,

Petitioners,

vs.

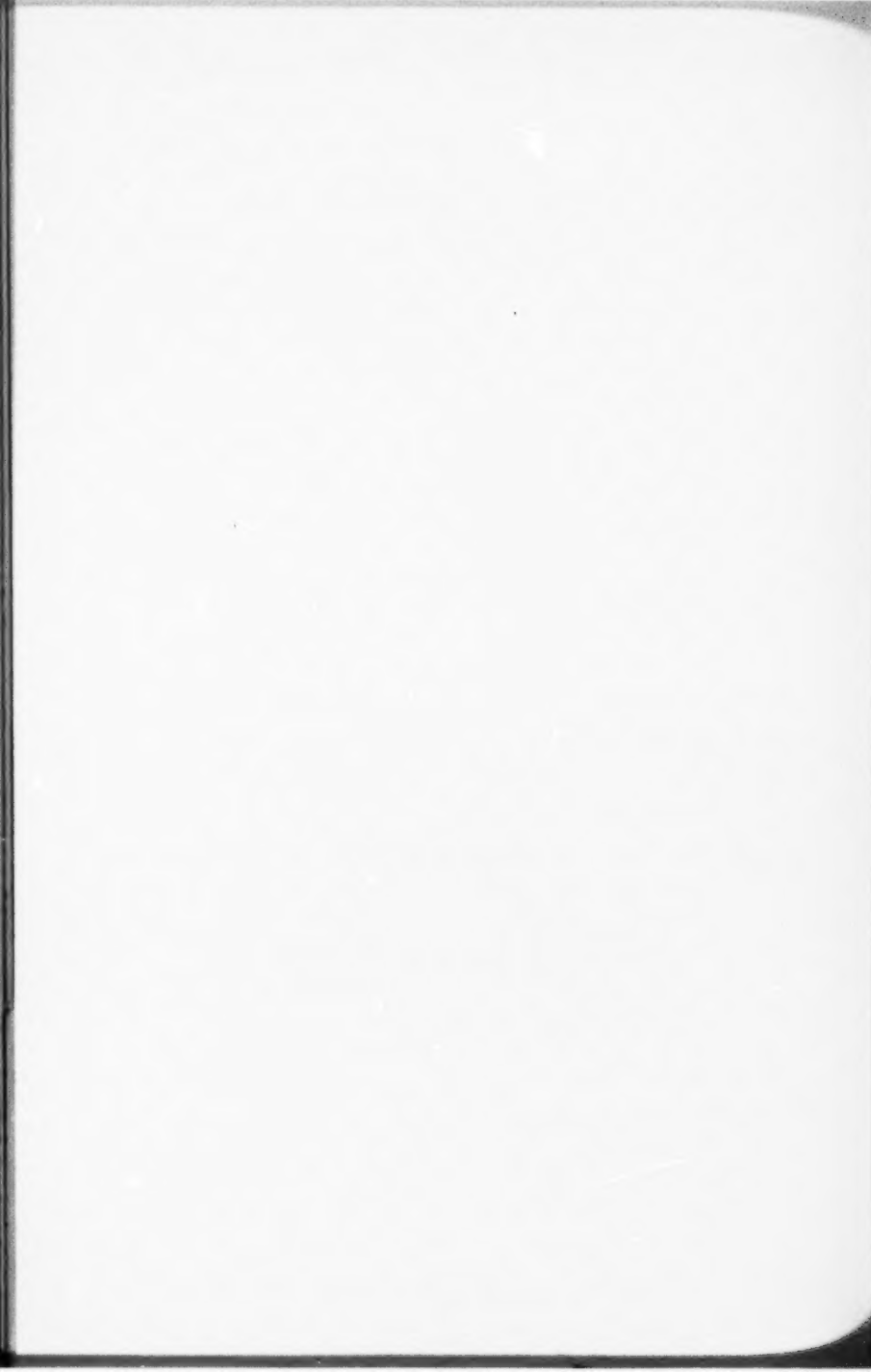
THE COLLECTOR OF INTERNAL REVENUE,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE COMMONWEALTH OF
THE PHILIPPINES.**

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THE COLLECTOR OF INTERNAL REVENUE,
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**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE COMMONWEALTH
OF THE PHILIPPINES.**

The above named petitioners, by the undersigned, their attorney, respectfully pray that a writ of certiorari issue to review the judgment of the Supreme Court of the Commonwealth of the Philippines which became final October 11, 1941 (R. 67-8) and which affirmed a final judgment of the Court of First Instance of the City of Manila filed July 20, 1939 (R. 30).

Opinions Below.

The opinions of the courts below are not officially reported. The trial court's opinion is at pages 17-30 of the record and that of the Supreme Court of the Commonwealth of the Philippines is at pages 31-53.

Jurisdiction.

The action was brought by petitioners to recover the amount of income taxes paid under protest for the years 1934 and 1935 imposed under the pretended authority of laws of the Philippine Islands, and for the year 1936 under the pretended authority of laws of the Commonwealth of the Philippines. The taxes, aggregating 64,585.65 Pesos, were claimed to be invalid and illegal as depriving of property without due process of law in violation of the Act of Congress of August 29, 1916, known as the Philippine Autonomy Act (c. 416, §3, 39 Stat. 546, Title 48 U. S. C., §1008), and of the Constitution of the Commonwealth of the Philippines (Sec. 1(1), Art. III), which became effective November 14, 1935, by proclamation of the President of the United States pursuant to the Act of January 17, 1933, c. 11, 47 Stat. 761, as amended by the Act of March 24, 1934, c. 84, 48 Stat. 456 (Title 48 U. S. C., §§1231-1247a), known as the Philippine Independence Act.

The case involves statutes of the United States, and the value in controversy exceeds \$25,000, a Peso being worth 50¢ in American money. This Court therefore has jurisdiction by virtue of Title 28 U. S. C., §349 (quoted *infra*, p. 5). The case also involves the Constitution of the Commonwealth of the Philippines and this Court has jurisdiction by virtue of Title 48 U. S. C., §1237(6) (quoted *infra*, p. 8). This application is made within six months after entry of judgment (October 11, 1941). Title 28 U. S. C., §350 (quoted *infra*, p. 6).

Statement.

The facts were stipulated (R. 12-17).

Petitioner, Manila Gas Corporation (referred to as the "domestic corporation") was organized under the laws of

the Philippine Islands. Its principal office is in Manila. It also has an office in the City of New York (R. 12).

Petitioner, The Islands Gas and Electric Company (referred to as the "foreign corporation") was organized under the laws of Maryland, transacts its business at Jersey City, New Jersey, and has an office at 90 Broad Street, New York City. It had and has no office, trade or business in the Philippine Islands and no domicile therein. It was and is a stockholder and a creditor of the domestic corporation. The certificates representing the shares of stock and the certificates representing the indebtedness of the domestic corporation to it have always been physically located at its domicile in the United States (R. 12-13).

During the years 1934, 1935 and 1936 the domestic corporation, through its New York office, paid to the foreign corporation at the latter's office in New York dividends on the stock and interest on the obligations of the domestic corporation held by the foreign corporation (R. 14-15).

Defendant, as Collector of Internal Revenue of the Philippine Islands, assessed against the domestic corporation as withholding agent and demanded payment of income taxes on the dividends and interest paid to the foreign corporation. The domestic corporation paid the taxes under duress and under protest (R. 15-16).

The amounts of dividends and interest paid by the domestic to the foreign corporation, the amounts of income tax paid by the domestic corporation, and the dates of payment thereof were as follows:

	Year	Amounts	Tax	Date
Dividends	1934	P 434,739.00	P 13,042.17	June 10, 1935
"	1935	389,766.00	11,692.98	June 4, 1936
"	1936	359,784.00	21,587.04	May 5, 1937
Interest	1934	162,322.40	4,869.67	June 10, 1935
"	1935	154,189.06	4,625.67	June 4, 1936
"	1936	146,135.40	8,768.12	May 5, 1937
Totals		<u>P 1,646,935.86</u>	<u>P 64,585.65</u>	(R. 16)

Petitioners claimed that the assessment and collection of the taxes from the domestic corporation as withholding agent for the foreign corporation which had no office, trade or business in the Philippine Islands and was domiciled in the United States was invalid for the reason that the Philippine Islands had no power or authority to levy a tax on persons or property not within its territorial jurisdiction and that the assessment and collection of the taxes from either the domestic or the foreign corporation or both deprived them of their property without due process of law and denied to them the equal protection of the laws (R. 8).

These claims in respect of taxes on dividends and interest paid in 1934 and 1935 are based upon the Bill of Rights contained in the Philippine Autonomy Act (quoted, *infra*, p. 6) and in respect of taxes on dividends and interest paid in 1936, are based on the Bill of Rights in the Philippine Constitution (quoted, *infra*, p. 8).

Both courts overruled the claims of petitioners and sustained the taxes (R. 17-30, 31-53). Upon reconsideration on motion of petitioners (R. 53-60) the Supreme Court of the Philippines adhered to its opinion (R. 60-61). Final judgment was entered October 11, 1941 (R. 67-68).

Questions Presented.

1. Whether the Government of the Philippine Islands had power to assess and collect from a Philippine corporation, as withholding agent, income taxes on dividends and interest paid by it through its office in New York to a stockholder and creditor which was a corporation organized under the laws of Maryland and had no office or place of business and transacted no business in the Philippine Islands.

2. Whether the assessment and collection of such taxes violated the due process clauses of the Bill of Rights contained in the Philippine Autonomy Act and, by requirement of Congress (Philippine Independence Act), in the Constitution of the Commonwealth of the Philippine Islands.

3. Whether the Government of the Commonwealth of the Philippines, prior to achievement of independence, is free from the restraints imposed upon states and territories of the United States which limit their taxing authority to persons and property within their jurisdiction.

Statutes Involved.

Title 28 U. S. C. §349.

“§349. Certiorari to review decisions of Supreme Court of Philippine Islands. In any case in the Supreme Court of the Philippine Islands wherein the Constitution, or any statute or treaty of the United States is involved, or wherein the value in controversy exceeds \$25,000, or wherein the title or possession of real estate exceeding in value the sum of \$25,000 is involved or brought in question, it shall be competent for the Supreme Court of the United States, upon the petition of a party aggrieved by the final judgment or decree, to require, by certiorari, that the cause be certified to it for review and determination with the same power and authority, and with like effect, as if the cause had been brought before it on writ of error or appeal; and, except as provided in this section, the judgments and decrees of the Supreme Court of the Philippine Islands shall not be subject to appellate review.”

Title 28 U. S. C. §350.

“§350. Time for making application for writ of error, appeal, or certiorari; stay pending application for certiorari. No writ of error, appeal, or writ of certiorari, intended to bring any judgment or decree before the Supreme Court for review shall be allowed or entertained unless application therefor be duly made within three months after the entry of such judgment or decree, excepting that writs of certiorari to the Supreme Court of the Philippine Islands may be granted where application therefor is made within six months. • • •”

Autonomy Act (Jones Act) of the Philippine Islands (Act of August 29, 1916, c. 416, §3, 39 Stat. 546, 48 U. S. C., §1008).

“§1008. Bill of rights and restrictions for islands. No law shall be enacted in the Philippine Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws. Private property shall not be taken for public use without just compensation.”

Philippine Independence Act (Act of January 17, 1933, c. 11, §§2, 7, 10, 47 Stat. 761, 765, 768, as amended by Act of March 24, 1934, c. 84, §§2, 7, 10, 48 Stat. 456, 460, 462; 48 U. S. C., §§1232, 1237).

“§1232 (a) The constitution formulated and drafted shall be republican in form, shall contain a bill of rights, and shall, either as a part thereof or in an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands—

“(1) All citizens of the Philippine Islands shall owe allegiance to the United States.

“(2) Every officer of the government of the Commonwealth of the Philippine Islands shall, before entering upon the discharge of his duties, take and subscribe an oath of office, declaring, among other things, that he recognizes and accepts the supreme authority of and will maintain true faith and allegiance to the United States.

• • • • •

“(13) The decisions of the courts of the Commonwealth of the Philippine Islands shall be subject to review by the Supreme Court of the United States as provided in paragraph (6) of section 1237 of this title.”

“§1237. Until the final and complete withdrawal of American sovereignty over the Philippine Islands—

“(1) Every duly adopted amendment to the constitution of the government of the Commonwealth of the Philippine Islands shall be submitted to the President of the United States for approval. If the President approves the amendment or if the President fails to disapprove such amendment within six months from the time of its submission, the amendment shall take effect as a part of such constitution.

“(2) The President of the United States shall have authority to suspend the taking effect of or the operation of any law, contract, or executive order of the government of the Commonwealth of the Philippine Islands, which in his judgment will result in a failure of the government of the Commonwealth of the Philippine Islands to fulfill its contracts, or to meet its bonded indebtedness and interest thereon or to provide for its sinking funds, or which seems likely to impair the reserves for the protection of the

currency of the Philippine Islands, or which in his judgment will violate international obligations of the United States.

• • • • •

“(6) Review by the Supreme Court of the United States of cases from the Philippine Islands shall be as now provided by law; and such review shall also extend to all cases involving the constitution of the Commonwealth of the Philippine Islands.

Constitution of the Philippines, Vol. 30 Philippine Public Laws, Appendix pp. 371, 372.

Article III, Bill of Rights.

“SECTION 1. (1) No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”

Act No. 2833, Vol. 14, Philippine Public Laws, pages 221, 229-230.

“SEC. 9. (b) All persons, corporations, joint-stock companies, partnerships, joint accounts (*cuentas en participación*), associations, insurance companies, and general co-partnerships (*compañías colectivas*), in whatever capacity acting, including lessees or mortgagors of personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, employers, and all officers and employees of the Government of the Philippine Islands having the control, receipt, custody, disposal, or payment of interests, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of any non-resident alien individual, other than income derived from dividends or net profits subject to the tax estab-

lished in subsection (a) of section ten are hereby authorized and required to deduct and withhold from such annual or periodical gains, profits, and income such sum as will be sufficient to pay the normal tax thereon, and shall make return thereof on or before March first of each year, and, on or before the time fixed by law for the payment of the tax, shall pay the amount withheld to the officer of the Government of the Philippine Islands authorized to receive the same; and they are each hereby made personally liable for such tax, and they are each hereby indemnified against every person, corporation, joint stock company, partnership, joint-account (*cuenta en participación*), association, or insurance company, or demand whatsoever by reason of the payment of the said tax."

Act No. 3761, Vol. 26, Philippine Public Laws, pages 71-73, approved November 26, 1930, amending Act No. 2833 as amended.

"SEC. 10. (a) There shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company, partnership, joint account (*cuenta en participación*), association or insurance company, organized in the Philippine Islands, no matter how created or organized, but not including duly registered general co-partnerships (*compañías colectivas*), a tax of three per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the Philippine Islands by every corporation, joint-stock company, partnership, joint account (*cuenta en participación*), association, or insurance company organized, authorized, or existing under the laws of any foreign country, including interest on bonds, notes, or other inter-

est-bearing obligations of residents, corporate or otherwise: . . .

• . . . •

“SEC. 13. (e) All the provisions of this law relating to the tax required to be deducted and withheld and paid to the internal revenue officer authorized to receive the same from the income of nonresident alien individuals from sources within the Philippine Islands shall be made applicable to the normal tax imposed by law upon the incomes described in subsection (b) of section nine, as well as upon the income derived from interest upon bonds and mortgages, or deeds of trust, notes, or other interest-bearing obligations of a domestic or resident foreign corporation, joint-stock company, partnership, joint account (cuenta en participación), association, and insurance company, whether or not the bonds and other such obligations or securities contain the so-called tax free covenant clause, and whether such bonds, obligations or securities had been heretofore or are hereafter issued or marketed, and the interest thereon paid, within or without the Philippine Islands, in cases where such income or interest is received or obtained by, or paid to, nonresident alien firms, co-partnerships, companies, corporations, joint-stock companies, partnerships, associations, trust companies, trustees and insurance companies, not engaged in business or trade within the Philippine Islands and not having any office or place of business therein.

“SEC. 13. (f) Likewise, all the provisions of this law relating to the tax required to be deducted and withheld and paid to the officer of the Government of the Philippine Islands authorized to receive the same from the income of nonresident alien individuals from sources within the Philippine Islands shall be made applicable to income derived by nonresident alien firms, corporations, joint-stock companies, partnerships, joint accounts (cuentas en

participación), associations, and insurance companies, not engaged in business or trade within the Philippine Islands and not having any office or place of business therein, from dividends upon the capital stock or from the net earnings on which the normal tax has not been paid, of domestic or other resident corporations, joint-stock companies, partnerships, joint accounts (*cuentas en participación*), associations, and insurance companies, which are exempt from income tax under this Act or any other law."

Section 10 of Act No. 2833, Philippine Public Laws as amended, as further amended by Act No. 117, Public Laws of the Commonwealth of the Philippines, Vol. 1, pages 560, 564.

"SEC. 10. There shall be levied, assessed, collected and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company, partnership, joint account (*cuenta en participación*), association, or insurance company, organized in the Philippines, no matter how created or organized, but not including duly registered general copartnerships (*compañías colectivas*), a tax of six *per centum* upon such income, and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the Philippines by every corporation, joint-stock company, partnership, joint account (*cuenta en participación*), association, or insurance company organized, authorized, or existing under the laws of any foreign country, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise: *Provided, however*, That nothing in this section shall be construed as permitting the taxation of the income derived from dividends or net profits on which the normal tax has been paid."

Specification of Errors to be Urged.

The court below erred:

1. In holding that the Philippine Islands had jurisdiction and authority to tax as income of the foreign corporation interest and dividends paid in New York by the domestic corporation to the foreign corporation which had no office or place of business, and transacted no business, within the Philippine Islands.

2. In holding that interest and dividends received in New York from the domestic corporation by the foreign corporation which had no office or place of business, and transacted no business, in the Philippine Islands constituted income from sources within the Philippine Islands.

3. In failing to hold that the imposition and collection of an income tax upon interest and dividends paid in the United States by the domestic corporation to the foreign corporation which had no office or place of business, and transacted no business, within the Philippine Islands constituted a violation of the due process and equal protection of the law clauses of the Bill of Rights contained in the Act of Congress known as the Autonomy Act (48 U. S. C., §1008) and in §1 of Article III of the Constitution of the Philippines.

Reasons Relied on for the Allowance of the Writ.

1. The decision of the court below in upholding the tax assessed in respect of dividends and interest received by the nonresident foreign corporation having no office or

place of business and transacting no business in the Philippine Islands is in conflict with the decision of this Court in *State Tax on Foreign-Held Bonds*, 15 Wall. 300, and the decision of the United States Circuit Court of Appeals for the First Circuit in *Domenech v. United Porto Rican Sugar Co.*, 62 F. (2d) 552 (cert. den. 289 U. S. 739).

2. The case presents important questions as to the construction and application of the Acts of Congress known as the Philippine Autonomy Act and the Philippine Independence Act and of a provision in the Constitution of the Philippines adopted in pursuance of the Philippine Independence Act, which have not been but should be settled by this Court.

3. This Court should determine whether in view of the Philippine Independence Act the Commonwealth of the Philippines, prior to achieving independence, is free from the restraints imposed upon states and territories of the United States which limit their taxing authority to persons and property within their jurisdiction.

Under the due process clause of the Fourteenth Amendment a state has no power to impose a tax upon a person or his property unless the person has his domicile or his property has a situs within the state. Under the Philippine Autonomy Act similar limitations were imposed on the Philippine Islands (Act of Congress of August 29, 1916, c. 416, §3, 39 Stat. 546; U. S. C., Title 48, Sec. 1008).

“ * * * It is settled that by virtue of the bill of rights enacted by Congress for the Philippine Islands, 32 Stat. 691, 692, that guarantees equivalent to the due process and equal protection of the law clause of the Fourteenth Amendment, * * * were ex-

tended to the Philippine Islands." *Serra v. Mortiga*, 204 U. S. 470, 474. See also *Yu Cong Eng. v. Trinidad*, 271 U. S. 500, 522, 523.

The taxes here in question were required to be withheld in respect of interest and dividends paid in the United States, where the bonds and stock certificates were at all times held, to a corporation which was a nonresident of the Philippine Islands and had no office or place of business and transacted no business therein.

In *State Tax on Foreign-Held Bonds*, 15 Wall. 300, a statute of Pennsylvania requiring a domestic corporation to withhold a tax of five per cent. upon interest paid to non-resident bondholders and creditors of the corporation was held to be beyond the power of the State. Mr. Justice Field said, at page 320:

"* * * But debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense; they are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed. To call debts property of the debtors is simply to misuse terms. All the property there can be in the nature of things in debts of corporations, belongs to the creditors, to whom they are payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations from numerous adjudications, but no number of authorities, and no forms of expression could add anything to its obvious truth, which is recognized upon its simple statement.

"The bonds issued by the railroad company in this case are undoubtedly property, but property in the hands of the holders, not property of the obligors.

So far as they are held by non-residents of the State, they are property beyond the jurisdiction of the State."

The principle upon which that case was decided has been approved by the later cases. *Buck v. Beach*, 206 U. S. 392, 408; *Farmers Loan & Trust Co. v. Minnesota*, 280 U. S. 204, 210.

It was applied in *Domenech v. United Porto Rican Sugar Co.*, 62 F. (2d) 552 (cert. den. 289 U. S. 739), which involved facts substantially identical with those involved in this case and in which the decision of the United States Circuit Court of Appeals for the First Circuit is directly contrary to that of the Philippine courts in this case.

There the Treasurer of Porto Rico sued to recover from the United Porto Rican Sugar Company taxes which he claimed it should have withheld in respect of interest paid by its predecessors to Maryland banks and Maryland corporations which had no places of business in Porto Rico. The tax was claimed under Sections 3 and 9 of Act No. 43, Laws of Porto Rico of 1921, and Sections 19 and 31 of Act No. 74, Laws of Porto Rico of 1925. Section 3 of Act No. 43 provided that all income, as defined in the Act, received or earned by citizens of the United States residing without Porto Rico and by any corporation organized in the United States and "who in any way derive income from sources located in this Island" should be subject to the payment of the income tax.

For purposes of comparison, we set forth Section 9 of Act No. 43, Laws of Porto Rico of 1921 and Section 10(a) of Act No. 2833 as amended by Act No. 3761, Philippine Public Laws, under which the taxes here in question were imposed.

Act No. 43, Laws of Porto Rico of 1921, Section 9

"In the case * * * of a corporation * * * organized * * * in the United States * * * the gross income includes only the gross income derived *from sources* within *Porto Rico*, or from the sale in the Island or elsewhere of the fruits, products or manufactures harvested, produced or manufactured in Porto Rico, *including also rents, interest on bonds, notes, mortgages or other interest-bearing obligations of residence [residents], whether individuals, corporations or entities of any kind.*" (Italics ours.)

Act No. 2833 as amended by Act No. 3761, Philippine Public Laws, Section 10(a)

"* * * and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year *from all sources within the Philippine Islands* by every corporation, joint-stock company, partnership, joint account (*cuenta en participación*), association, or insurance company organized, authorized, or existing under the laws of any foreign country, *including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise: Provided, however,* That nothing in this section shall be construed as permitting the taxation of the income derived from dividends or net profits on which the normal tax has been paid." (Italics ours.)

The Porto Rico Act was held to violate the due process clause contained in the Organic Act of Porto Rico.* The court said, 62 F. (2d), at page 555:

* Act of March 2, 1917, c. 145, §2, 39 Stat. 951; 48 U. S. C., §737:

"§737. Bill of rights and restrictions. No law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws."

“* * * We think it is indisputable that the tax is imposed on the nonresident creditor and is one measured by the income or interest on the loan or loans for a given year; that it is not simply a tax on the credit or debt. The question then is whether the Legislature of Puerto Rico had jurisdiction and authority to levy an income tax upon nonresident creditor corporations which had no place of business in Puerto Rico and did no business there through agents or otherwise. The answer to the question is so self-evident that the mere statement of the proposition is its own answer. The Legislature of Puerto Rico is without authority or jurisdiction to impose a tax upon nonresident corporations measured by income earned or to be earned upon transactions entered into and wholly performed beyond the confines of Puerto Rico. It has no greater power in this respect than a state.

“But if it could be said that the acts in question did not impose a tax upon the nonresident creditors, but was one imposed upon the credit or debt, of which the interest is in fact a part, that debt or credit had no situs in Puerto Rico. Its situs was in Maryland, outside the jurisdiction of Puerto Rico, and the Legislature of Puerto Rico had no authority or jurisdiction over it and could not tax it. The debt was a mere chose in action or intangible personal property, the situs of which was in Maryland where the creditor corporations were organized and did business.”

In *Street Railroad Company v. Morrow*, 87 Tenn. 406 (11 S. W. 348), a Tennessee statute requiring a domestic corporation to withhold from payments of interest coupons the amount of tax assessed against nonresident bondholders was held unconstitutional, Lurton, J., saying at page 438 (11 S. W. at p. 355):

“ * * * By no sort of fiction can the jurisdiction of the State be held to extend to the property which a non-resident has in a debt which he holds against a resident. The creditor cannot be taxed because he is not within the jurisdiction, and his property cannot be taxed because it is not within the jurisdiction.”

The Supreme Court of Wisconsin has also recognized that a state may not impose a tax on interest received by nonresident bondholders. In *State ex rel. Manitowoc Gas Co. v. Wisconsin Tax Commission*, 161 Wis. 111 (152 N. W. 848), the court said at page 115 (152 N. W., p. 850):

“ * * * The law levying an income tax upon non-residents ‘upon such income as is derived from sources within the state or within its jurisdiction,’ must be construed to mean such income as issues directly from property or business located within the state, and not income from loans made therein, though, as here, secured by a trust deed upon property situated within the state. The situs of the property out of which such income issues is that of the domicile of the creditor. *State Tax on Foreign-held Bonds*, 15 Wall. 300.”

The Supreme Court of the Philippines in answer to petitioners' contention that the dividends and interest received by the foreign corporation were income from sources outside the Philippines and therefore were not subject to the payment of income tax and that the Government had no power to impose a tax on the income of the foreign corporation from sources outside of the Philippines, said:

“ * * * It is obvious that upon the facts such dividends and interest were obtained by the Manila Gas Corporation as a result of its mercantile operations within the Philippines and by reason of trans-

actions effected also in the same place. As said in the case of *Manila Gas Corporation vs. Collector of Internal Revenue, supra**:

‘Pushing to one side that portion of Act No. 3761 which permits taxation of interest on bonds and other indebtedness paid without the Philippine Islands, the question is if the income was derived from sources within the Philippine Islands.

‘In the judgment of the majority of the Court, the question should be answered in the affirmative. The Manila Gas Corporation operates its business entirely within the Philippines. Its earnings, therefore, come from local sources. The place of material delivery of the interest of the foreign corporations paid out of the revenue of the domestic corporation is of no particular moment. The place of payment even if conceded to be outside of the country cannot alter the fact that the income was derived from the Philippines. The word “source” conveys only one idea, that of origin, and origin of the income was the Philippines.’

“In their third assignment of error, the appellants contend that the trial court erred in not holding that the Government has no power to impose a tax on the income of foreign corporations from sources outside of the Philippines, for the reason that the state may only tax persons and property found within its jurisdiction; and consequently, Section 13(e) and (f) of the Income Tax Law, in so far as it may be construed as taxing interest and

* 62 Phil. 895. In that case taxes on interest and dividends paid by the domestic corporation to the foreign corporation in the years 1930, 1931 and 1932 were involved. Petition for certiorari was denied 299 U. S. 571, doubtless because, as stated by the Philippine Supreme Court in its opinion and by respondent in opposing the application, the issue of the validity of the statute was not raised by the pleadings, in the decision of the trial court or in the assignment of errors (62 Phil. at p. 899).

dividends received by foreign corporations, such as The Islands Gas and Electric Company, is void and unconstitutional. The argument lacks merit in the face of the consideration, already referred to, that the interest and dividends upon which the taxes were collected and paid, are from sources within the Philippines" (R. 51-2).

The decision is thus plainly in conflict with the decision of this Court in *State Tax on Foreign-Held Bonds*, 15 Wall. 300, *supra*, and the decision of the United States Circuit Court of Appeals for the 1st Circuit in *Domenech v. United Porto Rican Sugar Co.*, 62 F. (2d) 552, *supra*.

These cases were concerned with the power to tax interest paid to non-residents on obligations held by them outside the territorial limits of the taxing authority. The principle underlying them is equally applicable to the tax on dividends. Both credits and stock are intangible personal property and have their situs at the domicile of the owner. *Kirtland v. Hotchkiss*, 100 U. S. 491; *Baldwin v. Missouri*, 281 U. S. 586; *Farmers Loan & Trust Co. v. Minnesota*, 280 U. S. 204; *Beidler v. South Carolina Tax Commission*, 282 U. S. 1; *First National Bank v. Maine*, 284 U. S. 312.

In *Miller v. McColgan*, 17 Cal. 2d 432; 110 P. 2d 419, the ruling of the Philippine Supreme Court in *Manila Gas Corporation v. Collector of Internal Revenue*, 62 Phil. 895, *supra*, that dividends paid by a Philippine corporation to non-resident stockholders constituted income having its source in the Philippines was found to be directly opposed to the settled American doctrine. The California Supreme Court held that the situs of stock of a Philippine corporation for purposes of taxation of dividends paid thereon was in California, the domicile of the stockholder.

The Philippine taxing statute, construed by the court below to apply to interest on bonds and dividends on stock paid by the domestic corporation to the foreign corporation bondholder and stockholder, violates the due process clause of the Philippine Autonomy Act. It also violates the due process clause of the Constitution of the Commonwealth of the Philippines which was incorporated therein by mandate of Congress expressed in the Philippine Independence Act.

The adoption of the Philippine Constitution, its approval by the President of the United States, and the establishment of the Commonwealth of the Philippines upon his proclamation, all pursuant to the Philippine Independence Act, did not withdraw from the Philippines the sovereignty of the United States nor create an independent sovereignty in the Philippine Islands.

In *Cincinnati Soap Co. v. United States*, 301 U. S. 308, this Court, referring to the situation which exists in the Philippines following the adoption and approval of the Constitution, said, at page 319:

“ . . . Undoubtedly, these acts have brought about a profound change in the status of the islands and in their relations to the United States; but the sovereignty of the United States has not been, and, for a long time, may not be, finally withdrawn. So far as the United States is concerned, the Philippine Islands are not yet foreign territory. By express provision of the Independence Act, we still retain powers with respect to our trade relations with the islands, with certain exceptions set forth particularly in the act. We retain powers with respect to their financial operations and their currency; and we continue to control their foreign relations. The power of review by this court over Philippine cases, as now provided by law, is not only continued, but is ex-

tended to all cases involving the Constitution of the Commonwealth of the Philippine Islands."

Evidences of the limited nature of the sovereignty of the Philippine Commonwealth are present throughout the Independence Act (quoted *supra*, pp. 6-8). In addition to those noted in the quotation from this Court's opinion, the Act required that the Philippine Constitution provide that "pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands" all citizens of the Philippines should owe allegiance to the United States and every officer of the government of the Commonwealth should subscribe to an oath declaring that he recognized and accepted the supreme authority of and would maintain true faith and allegiance to the United States; that all acts passed by the legislature of the Commonwealth should be reported to the Congress of the United States; that citizens and corporations of the United States should enjoy in the Commonwealth all the civil rights of citizens and corporations thereof. (Title 48 U. S. C., §1232.) The Independence Act further provided (*id.* §1237) that until final and complete withdrawal of American sovereignty over the Philippines every amendment to the Constitution of the Commonwealth should be submitted to the President of the United States for approval; that the President of the United States should have authority to suspend any law of the Commonwealth which in his judgment would result in a failure of the Commonwealth to fulfill its contracts or would violate international obligations of the United States.

These statutory provisions, as well as the decision of this Court in the *Cincinnati Soap Company* case, clearly indicate that until complete independence is achieved the Philippine Islands must still be considered as part of the territories of the United States and subject to the same limi-

tations of due process with respect to taxing power as are the states and other territories of the United States.

Conclusion.

We believe the record in this case presents questions which merit review by this Court. A copy of the record, duly certified by the Clerk of the Supreme Court of the Philippines, is filed with this petition. The Solicitor General of the Commonwealth of the Philippines has authorized service of copies of the petition and brief and record upon the Solicitor of the Department of the Interior, Washington, D. C., who, he states, represents the Government of the Commonwealth in all cases brought against it before this Court for review on certiorari. If, notwithstanding these facts, it is considered that because of existing conditions in the Philippine Islands it is inopportune presently to grant the relief herein prayed, we respectfully suggest that action upon this petition be deferred.

WHEREFORE, petitioners pray that their petition be granted and that the judgment of the court below be reversed.

Respectfully submitted,

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MUDGE, STERN, WILLIAMS & TUCKER,
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Counsel for Petitioners.



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U.S. Supreme Court
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No. 1127

IN THE
Supreme Court of the United States

OCTOBER TERM, 1941

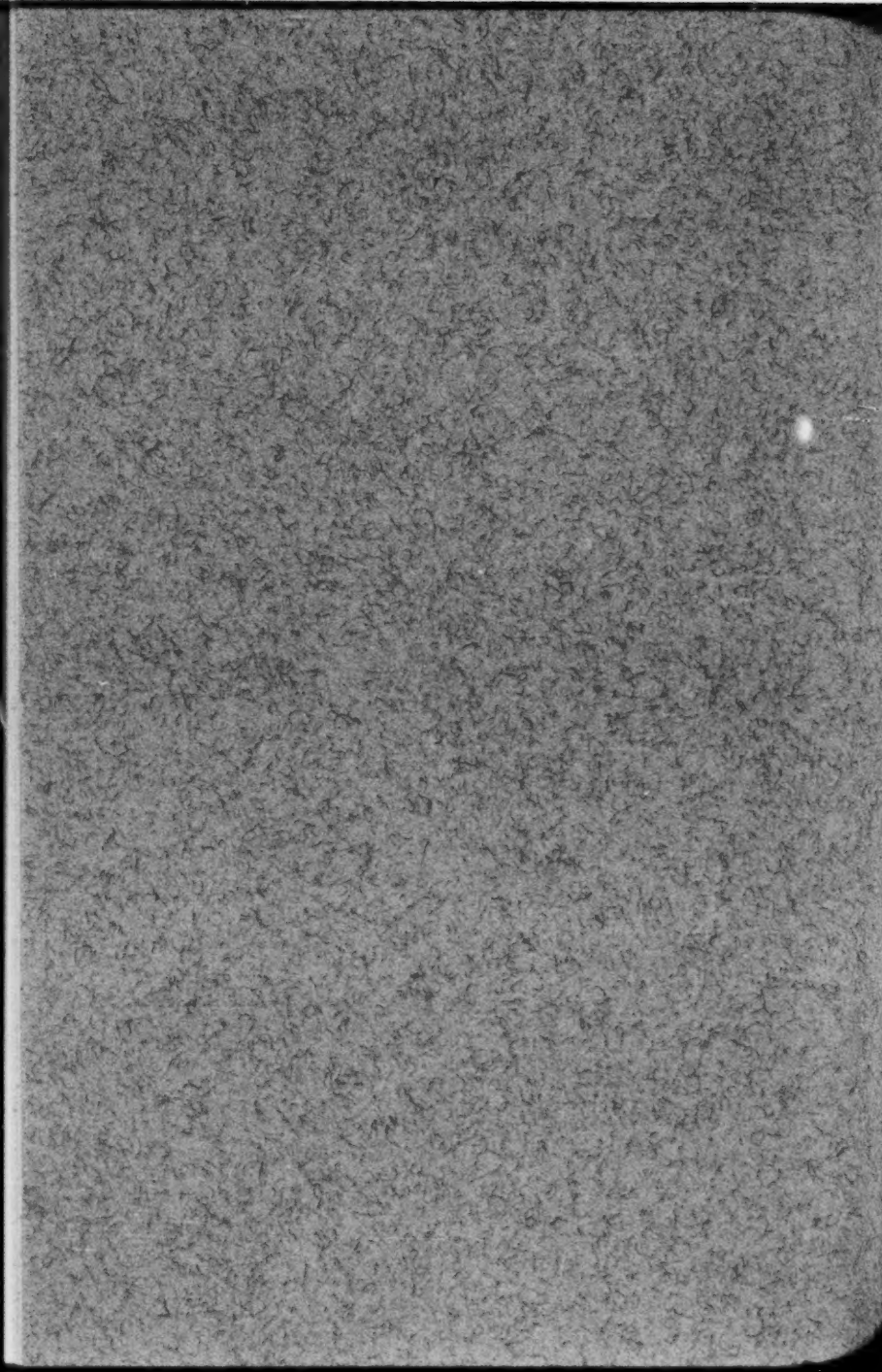
MANILA GAS CORPORATION AND THE
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*On Petition for a Writ of Certiorari to the
Supreme Court of the Philippines*

MEMORANDUM FOR THE RESPONDENT



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MEMORANDUM FOR THE RESPONDENT

The respondent does not oppose the granting of a writ of certiorari in this case.

In the petition for certiorari it is asserted that the decision of the court below, upholding the tax assessed in respect of dividends and interest received by a nonresident

foreign corporation, is in conflict with the decision of the United States Circuit Court of Appeals for the First Circuit in *Domenech v. United Porto Rican Sugar Company*, 62 F. (2d) 552 (1932), *cert. denied*, 289 U. S. 739.

The court below held that Act No. 2833, Vol. 14, Philippine Public Laws, as amended, imposing a tax on income, in the form of interest and dividends, paid to the Islands Gas and Electric Company, was valid. While we think that the decision of the lower court is correct, it is contrary to the decision of the court in the *Domenech* case, holding invalid a tax levied under a similar act of Puerto Rico.

In view of the conflict between these decisions affecting the taxing authority of the Philippines and Puerto Rico, the granting of a writ of certiorari in the present case is not opposed.

Respectfully submitted,

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May 6, 1942.

